The Planning Commission for the City of Junction City met on Tuesday, February 19, 2013, at 6:30 p.m. in the Council Chambers at City Hall, 680 Greenwood Street, Junction City Oregon.

PRESENT WERE: Commissioners, Brad Lemhouse (Chair), Jeff Haag, Jenna Wheeler, Kenneth Weaver, Sandra Dunn, Patricia Phelan and Jason Thiesfeld; Planner, Stacy Clauson; Interim City Administrator, Melissa Bowers; and Planning Secretary, Tere Andrews; ABSENT: Planning Commission Alternate, James Hukill

I. OPEN MEETING AND PLEDGE OF ALLEGIANCE

Chair Lemhouse opened the meeting at 7:10 and led the Pledge of Allegiance. The agenda was reviewed.

II. PUBLIC COMMENTS (FOR ITEMS NOT ALREADY ON THE AGENDA)

There were none.

III. APPROVAL OF MINUTES

●**JANUARY 29, 2013**

●**Motion:** Commissioner Haag made a motion to approve the January 29, 2013 minutes as written. The motion was seconded by Commissioner Phelan.

Vote: 7:0:0

Chair Lemhouse, Commissioners, Haag, Weaver, Thiesfeld, Wheeler, Phelan and Dunn voted in favor.

IV. PLANNING COMMISSION TRAINING

Planner Clauson introduced Gary Darnielle from Lane Council of Governments, Legal Services Division.

Mr. Darnielle began with the Constitutional/Statutory basis for Planning.

Constitutional/Statutory basis for Planning

Most of the power exerted by a Planning Commission and/or City Council to govern growth within its jurisdiction came from the State through legislation. The State's power to govern came from the United States Constitution.

In the early 1900's the City of New York adopted the first planning ordinance. Shortly thereafter the U.S. Department of Commerce produced a model enabling act. It had provisions which prescribed a stat's ability to create zoning districts and provided for a board of appeals. It was developed in 1924. By 1926 43 of the 48 states had adopted enabling legislation that included Oregon. The power of the Planning Commission was in

the Oregon Statues (ORS). ORS 227 prescribed the provisions that applied to cities regarding land use planning. The authority to create a Planning Commission was in the statute. In regard to membership of the Commission, State legislation precluded more than two (2) realtors or two (2) individuals of any one (1) occupation. Initially, duties of the Planning Commission were to conduct studies, some land use approvals and duties as assigned by the City Council.

The Oregon planning model began in 1973 with adoption of Statewide Planning Goal 100. The Planning Goal created the Department of Land Conservation and Development (DLCD) and the Land Conservation and Development Commission (LCDC) The Commission members were assigned by the Governor and served as the governing body for the DLCD. Planning Goal 100 required that LCDC adopt statewide planning goals within a couple of years. It required cities and counties to develop comprehensive plans and zoning ordinances that were consistent with the Statewide Planning Goals.

Beginning in 1973 and continuing for the next year LCDC traveled throughout Oregon and heard from Planning Commissions, City Councils, County Boards and citizen groups about their land development interests. On the basis of those conversations DLCD created the Statewide Planning Goals. The Goals were adopted as Administrative Rules.

Statewide Planning Goals

The first Goal was Public Involvement. It required that the public be involved anytime cities or counties adopted a Comprehensive Plan or zoning, ordinance or made changes. In most cases a jurisdiction had a separate citizen involvement committee in addition to the Planning Commission and City Council. Often members of the Planning Commission and City Council were members of the citizen group the first time a comprehensive plan was developed. Currently most communities passed the citizen involvement to their Planning Commissioners.

The next couple of goals developed had to do with natural resources. One of the themes heard by the DLCD was a desire for preservation of the natural resource economy. Oregon was based in large part on agricultural and forestry economies. The next goals developed were Agriculture, Forestry and Natural Resources.

The natural resource goal required that jurisdictions inventory their natural resources and determine if the resource was significant to the community. If so, the jurisdiction had to develop protection methods for those resources.

The urbanization goal (Goal 14) required that cities develop an urban growth boundary (UGB) and plan for their future needs 20-years at a time.

Mr. Darnielle was present at a Junction City meeting in the late 1970's when citizens discussed where they wanted the city to grow. A farmer, whose land was inside the city

limits, did not want to be included in the UGB thus there a section of Junction City is inside city limits but outside of the UGB.

For property placed inside the UGB it meant within that 20-year timeframe the properties would be used for urban uses based upon the inventory and needs as determined by the Planning Commission and City Council.

The next goal was for the Willamette Greenway (Goal 15) which applied to jurisdictions within a few hundred feet of the Willamette River. The final four (4) goals were the Coastal Goals.

There was a long process getting Comprehensive Plans and Zoning Ordinances approved by the State. It took seven or eight years because policy was developed as jurisdictions went before DLCD for approval of their plans. Each succeeding jurisdiction would be subject to the new rules. Through that process a large body of law both administrative rules and case law developed. The State realized it had a tremendous financial investment to keep current all of the Comprehensive Plans and Zoning Ordinances. Planning Grants were issued to nearly every jurisdiction to help pay for the Planning efforts. The State adopted a process called Periodic Review to ensure comprehensive plans remained current and complied with new legislation.

The other review process was for changes to Comprehensive Plan, Zoning or Subdivision Ordinance. The State required a Post-Acknowledgement Plan Amendment (PAPA). The PAPA required a 35 or 45-day notice to DLCD that change was being considered.

If a land use action were contested at the local level would be heard by the Land Use Board of Appeals (LUBA). Up to the time of Fasano vs Washington County (1973), when a Planning Commission or City Council made a land use action it was considered a legislative action. That meant a Commissioner or Councilor could be biased, no Findings or noticing was required. There was not a requirement to give citizens an opportunity to testify. The Oregon Supreme Court looked at the case and found indicators it was a judicial action. Decisions such as a re-zone affected a limited number of people; there were standards that had to be applied; and the Council or Commission was required to make a decision. The Court said that when those characteristics were present it was a quasi-judicial matter and certain due process procedures applied. A hearing notice was to be given to the applicant and affected property owners. A Commission or Councilor could not be biased. Findings were necessary to support the decision. Citizens had to have an opportunity to testify and a written decision was required.

Baker vs the City of Milwaukie (1975) said that the Comprehensive Plan was the law of the community, zoning and land division ordinances had to be consistent with that plan.

Open Meetings Law

The Open Meetings Law applied to any governing body. A governing body would be any public body that either makes decisions or recommendations to another public body. Subcommittees created by a Planning Commission would also be subject to the open meetings law.

The law defined the type of meeting notice that had to be given. There was a minimum of 24-hour notice unless it was an emergency meeting it must be a true emergency. The press must be notified of all meetings.

It provided for executive sessions. It also stated how an executive session should be conducted. The press must be invited to attend the executive session. The press cannot report on the discussion unless that discussion strayed from the topic of the executive session.

Public meetings must be accessible. A citizen may request, with 48-hour notice to the city, an interpreter or special equipment so they can participate. The city must give its best effort to find and provide such services.

Generally, meetings should be held in the jurisdiction.

The law included requirements for notification to the public of meetings when there would be a quorum of the governing body. A quorum of a body could meet socially so long as no discussions took place regarding city/county business. If there was not a quorum, city business could be discussed. Decisions needed to be memorialized. The laws applied to any governing public body which made decisions or recommendations. Written minutes had to include voting results, who voted and how they voted. The minutes must also contain discussions which took place and when or how to conduct an executive session.

Electronic communication was also subject to the Open Meetings Law. It included chain emails were city business was discussed. Members of a public body can participate via telecommunications. It counted toward a body's quorum.

Impartiality

Land Use actions were Quasi-judicial business. Changes to the zoning ordinance or comprehensive plan were legislative.

Conflict of interest

There was a code of ethics within the statue. Part of that code discussed conflicts of interest either actual or potential. A Potential Conflict of Interest occurred when a public official (elected, appointed, employed or a volunteer) had an official action that could result in financial gain or prevention of a financial detriment to that person, a

family member or business associate. Should it arise, written notice must be provided to the official who appointed them which stated there was a potential conflict of interest and request guidance. The official would then allow participation or require recusal.

Actual Conflict of Interest was when there was no question that a conflict of interest existed. The public official, family member or business associate would gain financially or there would be prevention of a financial detriment. The appointed public official would recuse himself or herself.

If the vote of an elected public official with a conflict of interest was necessary for a quorum, then that elected official could vote but not speak. The law says their primary duty is to do the public's business. If, without their participation, there would not be a quorum, and thus the public's business could not take place that was looked upon as worse than the public knowing there was a conflict of interest and voting anyway.

The "But for Rule" says a public official may not use or attempt to use their official position or office to obtain financial gain or avoid financial detriment that would not otherwise be available 'but for' their position in office. It also applied to family members or any business of the public official or their family members. An example of the 'But for Rule' would be a discount not available to the general public on goods or services. If however the discount were offered to a large segment of the population then it was alright.

There was a limit on gifts of no more than $50.00 per year from any one (1) source. They must be reported.

Future Employment - a public official cannot solicit or receive future employment in return for their vote. The same held true for disclosure of confidential information.

Under the stature the hiring and firing of relatives was fairly restricted.

The State of Oregon Ethics commission hears complaints regarding possible violations of conflict of interest, the But for rule and other violations. If merit were found the issue went to a hearing. If found in violation, under the 'But for Rule' fines would be imposed. They were generally three times the amount of the financial gain.

Failure to complete and submit an annual form to the Ethics Commission would result in a fine after a certain time period.

Conflicts of Interest requirements apply to public officials under both legislative and quasi-judicial situation.

Only under legislative actions may a public official be biased. The definition of biased was where a decision-maker cannot be impartial. In other words the public official

would not be able to apply the appropriate approval criteria. It most go beyond the appearance of impropriety, it must be actual bias. The courts have said, if there is bias found, even if the public official(s) vote(s) would not have changed the outcome, it 'pollutes the well.' In that case, the decision making process goes back to the jurisdiction; it is redone without the votes of those found to be biased.

An example given was if members of a city council belonged to a church that submitted a land use application, in most cases that would not be enough for bias. The councilors would need to disclose the potential issue and state their ability to be impartial.

An Exparte Contact occurred in quasi-judicial land use actions when a public official hears something outside the public venue that goes to the merits of a land use action. For example if a citizen stopped a public official at the store and asked the official to vote down a proposed land use action. The way in which to resolve the exparte contact was to declare the nature of the communication and that it had not biased them. The Chair would then ask the audience if anyone wished to respond to the declaration.

By statute, a public official not recollecting a communication was not an adequate disclosure of the exparte contact.

Technically a site visit could be considered an exparte contact if the owner of the property or a neighbor decided to speak with the Commissioners while at the site. Site visits should be noticed (included as an agenda item) and conducted as a group.

Generally, a zoning change would be considered a legislative action, however if the change involved the Comprehensive or zoning maps, it could be either a quasi-judicial or legislative. That depended upon how large an area was affected by the change. If it was a change to text and affected nearly all, it was legislative but if it were a one (1) property zone change it would be quasi-judicial. A court would look at three (3) things; involvement of approval standards, number of affected property owners and whether or not the process must be completed or can it simply be discontinued.

When in doubt Mr. Darnielle recommended the use of the quasi-judicial procedures.

In a quasi-judicial procedure, the public official is a judge. In other words the evidence must be weighed. Thus the findings of fact must relate to the evidence and vice versa. The burden of evidence lies with the applicant to show by a preponderance of the evidence that all of the approval criteria were satisfied. By the same token, if an application were denied there only need be one (1) criterion that was not met. It is a good idea to address all criteria in case it was ever taken to LUBA. The decision would be reviewed by LUBA on the basis of substantial evidence which meant a reasonable

person would be able to rely upon the evidence to come to a conclusion. Substantial evidence could exist on both sides of an issue. If the side chosen by the governing body had substantial evidence it normally prevailed on an appeal. In some instances however there could be conflicting evidence. In a situation such as that, it was best to address the conflicting evidence and explain in the findings why one set of evidence weighted more heavily than the other. It can be something as simple as the credibility of the person on the other side of the case. In terms of credibility is it the professional's area of expertise (i.e. a geologist as opposed to an expert hydro-geologist). On a number of occasions LUBA found that the observations and/or measurements of a neighbor were more accurate than a professional hired by the applicant.

The Record

Normally, the procedures in the zoning ordinance or possibly another ordinance should state a certain individual to be the keeper of the record. That allowed people turning evidence in before a hearing took place to guarantee the information was in the record.

Information given to the Planning Commission at a public hearing (not already in the record) can best be handled by the chair recognizing submission of the evidence. The burden of proof was on the person submitting the evidence. It should also be reflected in the minutes.

Motions

It was important all know the findings of fact incorporated into the decision. Under Oregon Law the decisions must be supported by findings of fact. For instance the governing body could not direct staff to go back to their office and write findings of fact to support their decision. The governing body must know the findings. The findings of fact could be modified in an open session so long as a motion reflected those modifications. The changes would be written up and the final findings and decision presented to the Chair. They could then be signed by the Chair.

Public Hearings

It was important the chair be strong and knowledgeable. The ground rules should be stated clearly at the beginning of the hearing in terms of what was expected of the public, how long they can testify and that they would be notified when they their time elapsed otherwise control of the hearing could be lost. Anyone refusing to follow the stated procedural rules, after being notified of what they are, can be considered a trespasser and the police can remove them.

The chair can ask the audience how much time they need, 'will anyone need more than three minutes if so, how much.' Another option was for a member of the public to

request the record remain open an additional week (if it is a quasi-judicial matter). It was also helpful to let the person testifying know when they had a minute left or offer an extra minute if need be.

The Commissioners thanked Mr. Darnielle for the training.

V. SIGN STANDARDS – MODIFICATIONS TO THE SIGN CODE TO ADDRESS BANNER SIGNS

Planner Clauson explained the request from the Design Committee, a subcommittee of the Community Development Committee, for changes to the Sign Code. The sign code had been one of the topics raised by the Planning Commission during their work plan discussion in January.

Different Banner Programs had been used in nearby communities. The cities of Corvallis and Springfield had banner programs. The issue for Junction City was that the current sign regulations limited the size of banner signs placed in the right-of-way. The limits in the current regulations would not allow the type of banner signs used in the other communities. The other issue was the number of signs allowed by the sign code within the adjoining right-of-way. The size and number of signs were the key issues.

Planner Clauson provided some background on banner signs. They were a flag like sign attached to a post placed in the right-of-way (sidewalk) intended to be out only during business hours. The sign code currently allowed daily display signs, a sandwich board or 'A'-frame sign, within the right-of-way. However, the size and number were restricted. By code one such sign was allowed along each property frontage. The maximum daily display sign width was four (4) feet with a height of four and one-half (4.5) feet. Placement was also regulated to ensure safe passage for pedestrians and allow cars to park appropriately. No sign permit was required for this type of sign. The banners found in other cities were typically larger than allowed in the current city code. The sign code included allowances for placement of daily display signs off-premise but the number of signs was still restricted to one (1) per property frontage.

Some of the questions were if banner signs were allowed; would a sign permit be required, would the signage be counted toward the maximum allowable sign area for a property (currently daily display signs did not count toward sign area), the number of signs allowed and the size.

Planner Clauson drafted regulations that considered some of these issues. It was reviewed by the Community Development Committee (CDC). Summary of that discussion was included. There was interest at the CDC in expanding the number of daily display signs allowed. They were concerned one (1) daily display sign per property frontage was too restrictive. There was also concern that the signs be installed to allow for clear areas along curbs so cars did not bump into the sign/banner.

A larger issue for possible future discussion was the entry to downtown at Sixth Avenue and Ivy Street. There was a lot of signage at that location. The question was how best to meet the need to advertise downtown businesses and also address the number of signs installed in that single location since that practice did not meet the current sign code.

Planner Clauson wanted to introduce the issue and suggested a discussion take place at the March Planning Commission meeting. She asked if there were requests for additional information. A tentative schedule could include discussion at the March meeting and provided the Commission was comfortable with any changes, a public hearing in April, 2013.

Commissioner Wheeler asked if there had been discussions with business owners.

Planner Clauson said currently the Design Committee (which included business owners) was working on putting a banner program in place and there were barriers presented by the sign code. Those issues could be fixed in a targeted approach. Once the sign code was opened up it needed to be a much more extensive process. Business owners would need to be involved in that process.

Commissioner Haag asked if the banners were expensive.

Administrator Bowers responded they were around $120.00 each.

Commissioner Haag suggested staff present some sign/banner sizes that would work for the business now and include a sundown clause, of one (1) year in the code changes. He asked if that would allow enough time for a review of the entire sign code.

Chair Lemhouse understood it was the banners that needed to be addressed not necessarily the entire sign code.

Planner Clauson said the amendments as presented to the Planning Commission focused on the banner issue.

Chair Lemhouse asked how the poles would be anchored to the sidewalk.

Planner Clauson a hole would be drilled into the sidewalk and a casing installed.

Commissioner Thiesfeld wanted input from businesses to understand what they wanted.

Commissioner Weaver felt a banner program similar to that in Corvallis was preferable however any changes also needed to address the current number of daily display signs on the sidewalks.

Planner Clauson replied that was where the number issue arose. For instance if the number remained one but the size were changed, business owners would have to

choose an ‘A’-frame/sandwich board sign or a banner. She felt there was concern that would make a banner program less desirable.

Commissioner Thiesfeld asked how many signs a business needed. Along Ivy Street there was not a lot of sidewalk space between buildings and the street.

Planner Clauson agreed and noted there were some provisions in the current sign code that addressed this; such as signs could not overhang the curb and sign placement had to allow for pedestrians.

Chair Lemhouse added the vision clearance triangle requirements had to be met. He asked if Commissioner Thiesfeld was talking about enforcement.

Commissioner Thiesfeld replied it was.

Commissioner Haag asked if there were a specific number of allowable signs requested by business owners.

Planner Clauson said she had not heard such a request however they had not gone out and asked that question. The question did come up at the Design Committee and they recommended two (2) daily display signs be allowed. That recommendation was forwarded to the CDC. The Corvallis sign code had language which addressed the number of signs.

Commissioner Wheeler said it was one (1) sign every 25-feet.

Planner Clauson and Chair Lemhouse agreed.

There was general agreement that approach might work for Junction City.

Commissioner Thiesfeld asked how the sign code modifications would be enforced.

Planner Clauson said it would be city staff including the Police Department.

Chair Lemhouse asked if the Commission wanted to proceed.

The Commissioners voiced agreement to bring back code revisions at the March meeting.

Commissioner Weaver suggested the Chamber of Commerce be invited to attend.

Commissioner Wheeler agreed.

Commissioner Haag agreed it would be helpful to have business owners present to explain what they wanted.

Chair Lemhouse asked since it may affect the right-of-way along Highway 99 (Ivy Street), how did the Oregon Department of Transportation (ODOT) fit into this.

Planner Clauson replied notice of the public hearing would be sent to ODOT.

Commissioner Thiesfeld asked who would drill the holes in the sidewalk for the banner poles.

Planner Clauson understood the he city would be responsible.

Chair Lemhouse asked if they wanted to include the corner at Sixth Avenue and Ivy Street.

Commissioner Dunn said there were discussions on that area at the Design Committee.

VI. PLANNING ACTIVITY REPORT

Due to time Chair Lemhouse suggested Commissioners review the report on their own.

VII. FUTURE AGENDA ITEMS

Planner Clauson said there was a vacant Alternate position for the Planning Commission. Review of applications would be on the March agenda.

VIII. COMMISSIONER COMMENTS

Commissioner Dunn said the meeting was very informative. Others agreed.

IX. ADJOURNMENT

Motion: Commissioner Phelan made a motion to adjourn the meeting. The motion was seconded by Commissioner Wheeler.

Vote: 7:0:0

Chair Lemhouse, Commissioners, Haag, Weaver, Thiesfeld, Wheeler, Phelan and Dunn voted in favor.

The meeting was adjourned at 9:05p.m.

The next regularly scheduled Planning Commission meeting would be Tuesday, March 19, 2013 at 6:30 p.m.

Respectfully Submitted,

Tere Andrews, Planning Secretary

Brad Lemhouse, Chair